

TERRY L. VINEYARD
Claimant

KANSASLAND TIRE,
Respondent

COMMERCE & INDUSTRY INS CO.,
Insurance Carrier

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ORDER

ISSUES

Claimant argues that he gave proper notice to his supervisor the day of his accident. Claimant further argues he has met his burden of proof to establish he suffered a work-related accident and is entitled to his requested medical and temporary total disability compensation benefits.

Respondent argues that claimant's request for benefits should be denied due to lack of substantial and credible evidence that claimant's work duties caused his injury.

¹ Order at 1.

Respondent argues that claimant failed to give proper notice regarding the occurrence of this accident on December 17, 2002.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record compiled to date and the respondent's brief, the Board makes the following findings of fact and conclusions of law:

At the preliminary hearing held on May 27, 2003 before Administrative Law Judge Nelsonna Potts Barnes, claimant presented the medical records and off-work slips from his physician, Dr. Terry Summerhouse. During the preliminary hearing, claimant testified that on December 17, 2002 he injured his back while "rotating, balance, trying to eliminate a vibration, replacing one or two tires" on a one-ton Dodge dually pickup truck.² Claimant testified that he reported his injury to his supervisor and told her he wanted to go to the doctor.³

Respondent presented the testimony of claimant's supervisor and the general manager. Respondent also presented the job slips for December 17, 2002 and clock-in and clock-out times for the week of December 16, 2002 for claimant. The supervisor and general manager testified that there was no work slip for a one-ton Dodge dually pickup truck on December 17, 2002 or anytime that week.⁴ The supervisor testified that claimant did not report an injury to her on or about December 17, 2002 or request medical treatment. In fact the supervisor testified that she was unaware that claimant left early that day to see his physician.

The Board agrees that the record fails to prove that claimant's back injury arose out of and in the course of his employment with respondent or that claimant gave proper notice. Consequently, the Board must deny claimant's request for benefits.

WHEREFORE, Administrative Law Judge Nelsonna Potts Barnes preliminary hearing Order dated July 25, 2003 is affirmed.

IT IS SO ORDERED.

² P.H. Trans. at 14.

³ *Id.* at 17.

⁴ *Id.* at 84-85.

Dated this ____ day of October 2003.

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Douglas Hobbs, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director